72-1460 FILE COPY

APR 26 1973

MICHAEL RODAK, JR., CLERK

72-1460

IN THE

Supreme Court of the United States

October Term, 1972

FAIRH RIGGS,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

HENRY ROTHBLATT
Attorney for Petitioner
232 West End Avenue
New York, N. Y. 10023
(212) 787-7001

(3554)

TABLE OF CONTENTS

	Page
Table of Cases	ii
Opinions Below	1
Jurisdiction	2
Questions Presented	3
Constitutional Provisions Involved	4
Statement of the Case	4
Reasons for Granting the Writ	24
Conclusion	39
Appendix:	
Opinion of Hon. John Bartels, District Judge	A-1
Opinion of Hon. Henry J. Friendly, United States Court of Appeals	A-20
Order of the United States Court of Appeals for the Second Circuit Affirming	A-40
Order of the United States Court of Appeals Denying Rehearing	A-42

TABLE OF CONTENTS

	Page
Order of the United States Court of Appeals Denying Rehearing en banc	A-44

TABLE OF CASES

Terry v. Ohio, 392 U.S. 1, 85 S.Ct. 1868, 20 L.Ed. 889	25
	33
	34
	35
	37
	39

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

- x

FAIRH RIGGS,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

- x

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Second Circuit rendered in the above entitled

case on February 15, 1973. That decision affirmed the judgment of conviction rendered on August 31, 1972 by Hon. John R. Bartels sitting without a jury in the United States District Court for the Eastern District of New York.

Petitioner was convicted of a single count of possession of narcotics with intent to distribute in violation of Title 21, U.S.C. Sec. 841 (a) (1).

The opinion of Chief Judge Friendly of the United States Court of Appeals for the Second Circuit in this case has not yet been reported. It is set forth in Appendix A herein.

JURISDICTION

The decision of the United States

Court of Appeals for the Second Circuit was rendered and entered on February 15, 1973. A petition for rehearing containing a request for rehearing in banc was denied on March 27, 1973. No request for an extension of time to file this petition has been made. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254 (1).

QUESTION PRESENTED

Was the stop and subsequent arrest of the petitioner by the Deputy United States Marshals lawful when that stop was based on mere suspicions relayed to the Deputies who did not themselves possess any articulable facts or make any personal observations of the petitioner?

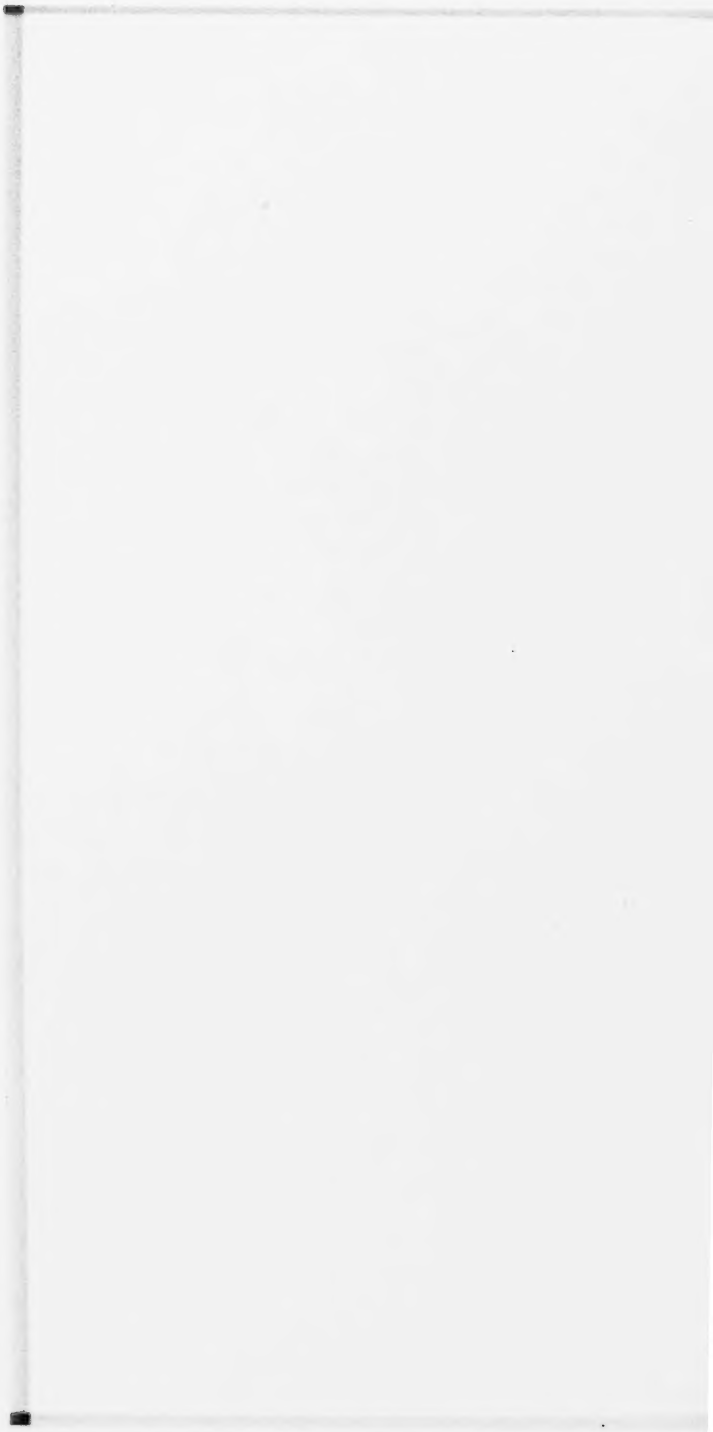
CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath and affirmation, and particularly describing the place to be searched and the persons or things to be seized.

STATEMENT OF THE CASE

A judgment of conviction was rendered against the petitioner by Hon. John R. Bartels, sitting without a jury in the United States District Court for the Eastern District of New York. The petitioner was convicted of a single count of possession of narcotics with intent to distribute in violation of Title 21 U.S.C. Sec. 841 (a) (1).



Jurisdiction lay in the federal court by virtue of the fact that petitioner was charged with a crime under the laws of the United States of America.

On the morning of September 26, 1971, Fairh Riggs purchased a one-way airline ticket for an American Airlines flight from Detroit to New York. She paid for the ticket in cash taken from a brown paper bag.

Lewis Methner, a supervisor for American Airlines, was informed by the ticket agent that there were a male and a female who fit American Airline's hijacker profile about to board the nine o'clock flight to New York. Both persons were black. The woman was Fairh Riggs. The American Airlines "profile" consists of three objective

characteristics - age between 15 and 65, purchase of a one-way ticket, payment for ticket in cash. In addition, American Airlines uses a subjectively-judged characteristic - suspicious behavior or "suspicious-looking."

Mr. Methner proceeded to the sales counter and requested identification from the two passengers. Neither party produced identification. On a subsequent request, Miss Riggs produced what Methner remembered as being a driver's license. Although Miss Riggs' ticket was made out to P. Griggs, Mr. Methner did not request further identification to correspond with the name on the ticket since airline personnel sometimes err in the spelling of names.

Mr. Methner checked the brown

paper bag Miss Riggs was carrying. It was filled with money. He believed she was not carrying weapons so he conducted no further search. After this inquiry Miss Riggs boarded the plane for New York.

Mr. Methner notified the Michigan State Police about the incident because he was concerned about the amount of cash Miss Riggs was carrying. He told Officer William Schmidt that he had conducted a "profile check" on a woman who was carrying a large amount of money. Officer Schmidt testified that his suspicion was aroused because Miss Riggs was carrying a large amount of cash in her purse and in a paper bag.

Officer Schmidt called the intelligence section of the Michigan State Police

to check on Miss Riggs (known to him as P. Griggs) and Messrs. Yergin and Wilson (the other names for whom a reservation was made).

The Intelligence Division responded that they had no record on P. Griggs, but they did have a record for Cynthia Joyce Griggs. Cynthia Joyce Griggs had a record of two arrests for narcotics offenses. The charge was dismissed in 1967 because of the death of the principal witness. Intelligence Division told Officer Schmidt that the witness had been murdered.

Officer Schmidt contacted Mr. Edmund Irvin at the Federal Bureau of Narcotics and Drugs in New York. The two conversed about Cynthia Joyce Griggs and Officer Schmidt asked Agent Irvin if he

would contact LaGuardia Airport and have someone follow P. Griggs.

Then Officer Schmidt called the Detroit Police Department Narcotics Division and inquired as to whether they had a current file on Cynthia Joyce Griggs. He was informed that she was out on bond for a narcotics arrest.

At 10:10 A.M. (Detroit Time, 11:10 N.Y. Time), after his call to the Michigan State Police, Officer Schmidt contacted Sgt. Reinke, desk officer of the Port of Authority Police at LaGuardia Airport.

Schmidt told Sgt. Reinke about two or three individuals who had boarded the New York bound plane. He told Sgt. Reinke that he had run a name check and had come up with a possible identification of P. Griggs

as Cynthia Joyce Griggs, a known narcotics dealer. Officer Schmidt testified that he did not remember telling Sgt. Reinke or later, Detective Stone, that a witness in a case involving Cynthia Joyce Griggs had been a victim of a homicide. In all his notes, Officer Schmidt found no reference to a homicide in connection with Cynthia Joyce Griggs despite his testimony that he had been so informed.

Detective Stone of the Port Authority Police testified that at 10:55 New York time, the Port Authority Police desk officer received information from Detroit that three persons who had boarded the 9:00 flight from Detroit had aroused suspicion. The three had purchased one-way tickets for cash for the Detroit to New York flight.

He was given a description of the female. Stone testified that the Port Authority Police had been given the name Fairh Riggs for this female. He said that the name Cynthia Joyce Griggs was not mentioned to him by Detective Schmidt until the night after he first testified. That is the night of December 27, 1971, three months after the incident at the airport. Stone testified that on December 27, Schmidt told him that the information that he had given Stone relating to Fairh Riggs actually concerned Cynthia Joyce Griggs.

Patrolmen Serio and Norwicke were ordered by Detective Stone and his partner Detective Beuley to observe, in plainclothes, those three persons as they disembarked and to follow them if they left together.

At 11:40 A.M. Patrolman Serio

observed the woman leave the airplane by herself; she walked out of the terminal building to the cab stand. Patrolman Norwicke followed the two men who also walked to the cab stand and entered a second taxi.

Stone testified that Patrolman Serio telephoned him at approximately 11:45 A.M. After this call, Detective Stone received a message from Det. Schmidt of the Michigan State Police. Stone had previously instructed the communications center of the Port Authority Police to contact the Michigan State Police to see if there were any warrants on Fairh Riggs and Schmidt was returning the call.

Det. Stone testified that Det. Schmidt told him the subject's name was Fairh Riggs;

that she used the alias Jackson and was part of the Jackson gang. Stone also testified that Schmidt told him that members of the Jackson gang were known to carry weapons.

Detective Schmidt testified that at approximately 11:00 A. M. Detroit Time, he received a call from Detective Stone. Schmidt told Stone the information he had gathered on Cynthia Joyce Griggs. He told Stone that Cynthia Joyce Griggs had last been arrested with a large group of persons by the Detroit Police and that guns had been found in the apartment. Officer Schmidt testified that he never gave the New York authorities the impression that P. Griggs was armed, since he believed that she had been searched and cleared by the Detroit airlines officials. Officer Schmidt told

Detective Stone that the woman had been searched, found to have no weapons, and allowed to board the airplane.

Detective Schmidt testified that he was not aware of the existence of any Jackson gang. He did not recall telling Detective Stone about any Jackson gang.

Stone denied that he was told that Fairh Riggs had been searched in Detroit.

After speaking with Detective Schmidt, Detective Stone notified the United States Marshals about the three persons. Stone claimed to have told Deputy Marshal Ron Ehnes that the three persons came in in a suspicious manner and that the Port Authority Police suspected them of being in New York to make a narcotics buy or that they were trafficking in guns. Stone testified

that he told Ehnes that the trio might be carrying weapons. He told Ehnes that the marshals would be notified if the three came back.

Stone alerted all the airlines that fly to Detroit to notify him if Fairh Riggs returned to purchase a ticket. He gave them a description and told them that she might be carrying a weapon and narcotics.

American Airlines supervisor Joseph Cannon testified that in response to a message he received from information agent Jim Ward, he called American Airlines in Detroit and spoke with the supervisor on duty. The supervisor told Cannon that three persons were arriving in New York on a flight from Detroit and that the Michigan State Police were interested in

them. The Detroit supervisor told Cannon there was a possible narcotics violation. Cannot did not recall the Detroit supervisor saying anything about guns. Cannon relayed this information to Supervisor Richard Ruckel when Ruckel came on duty about noon. Cannon told Ruckel about the arrival of the three persons, the description and the possibility of a narcotics buy. He did not say anything about weapons.

Shortly after 1:30 P.M. Supervisor Ruckel noticed a woman fitting the description of Fairh Riggs sitting in the departure lounge of Flight 617 for Detroit. The flight was scheduled to leave at 1:55 P.M. or 2:00 P.M.

He knew that the Port Authority Police and the United States Marshals would

like to question and investigate Miss Riggs.

After noticing her in the lounge, Ruckel checked the ticket list and found the name of Fairh Riggs and that she had purchased her ticket in cash at the gate. Ruckel called the Port Authority Police office and told Detective Stone that the young lady they were interested in investigating was waiting in the lounge of Gate 9. Stone told Ruckel to call the United States Marshals.

Ruckel called the United States Marshals. He told the Deputy Marshal Allen Huttick that there was a young lady in the departure lounge of Gate 9 waiting for the flight to Detroit. He told them the name and description fitted that woman who Ruckel believed the marshals wanted to

investigate. He gave them the name Fairh Riggs which was the exact name he had been given by the Port Authority Police. He also told the marshals that the Port Authority Police were on their way to the Gate. Marshal Huttick asked Ruckel if the woman met the airline's hijacker profile and told Ruckel that the marshals could not respond otherwise, unless the information given was that she was possibly carrying guns. Ruckel told Huttick that Miss Riggs did meet the hijacker profile.

Huttick had earlier been given information concerning Miss Riggs by Deputy Marshal Ron Ehnes. Marshal Ehnes had told Huttick that he had been notified by the Port Authority Police that a black woman and two black men had arrived from Detroit

with a large amount of cash. Ehnes gave Huttick a description of the woman and relayed the message from Detective Stone that the woman might be here to buy narcotics and might possibly be carrying a weapon.

Deputy Huttick told Deputy Marshal O'Flaherty that American Airlines had a woman who fit the description of the woman who the Port Authority Police were looking for. He told O'Flaherty that she was in the boarding lounge of Gate 9. O'Flaherty never spoke with any official of American Airlines. He never spoke with the Port Authority Police. No one ever told him that Miss Riggs was suspected of trafficking in narcotics. No one ever told him that Miss Riggs was suspected of carrying a weapon.

Marshals Huttick and O'Flaherty proceeded to Gate 9. They saw the subject entering the entrance to the jetway. Deputy Marshal O'Flaherty stopped Miss Riggs and asked her for her ticket which she gave them. Miss Riggs testified that the marshals told the stewardess to close the airplane door.

At this point the marshals began to walk Miss Riggs away from the plane, toward the closed door at the boarding lounge entrance. Fairh Riggs testified that she gave one of the marshals her automobile registration. The marshals testified that Miss Riggs produced a bill from the Detroit Edison Company addressed to Fairh Jackson. O'Flaherty asked for additional identification. Huttick and O'Flaherty testified that Miss

Riggs opened her bag and removed another bill from the Detroit Edison Company. Miss Riggs testified that she explained to the marshals that she had no other identification since she had recently lost her wallet and that the marshals then asked if they could search her belongings. Miss Riggs asked for a policewoman and one of the marshals opened the leather carrying case which Miss Riggs had placed on the floor. There was nothing but money and letters in it. Then the marshals asked to look into her purse, and when she refused they took it from her, opened up, and spotted the narcotics. Then they asked Miss Riggs to follow them.

The marshals testified that when Miss Riggs opened her bag to pull out the second bill they both spotted the narcotics.

Marshall Huttick testified that at this point his suspicion became aroused because of what he had seen. At this time, according to the Marshals, O'Flaherty reached down, opened the leather carrying case and discovered narcotics. They asked Miss Riggs to come to the marshal's office.

Miss Riggs and deputies Huttick and O'Flaherty met Detectives Stone and Bewley in the boarding lounge. Deputy O'Flaherty proceeded directly to the marshal's office to conduct field tests on the powder to determine if it was heroin. The test proved positive and Fairh Riggs was formally placed under arrest by Marshal O'Flaherty.

After her arrest Miss Riggs' purse was emptied by Marshal O'Flaherty.

O'Flaherty took Miss Riggs' purse home with him the night she was arrested. He never made a list of what he took home. Marshal O'Flaherty removed some items which he believed to be pertinent evidence and returned the rest to Miss Riggs the following day.

At the hearing both Marshals Huttick and O'Flaherty denied ever having seen an automobile registration in the name of Fairh Riggs. Huttick admitted that he had told the Assistant United States Attorney that when stopped Miss Riggs presented two separate identifications, one with the name Riggs and the other with the name Jackson. At the hearing Huttick testified that the identification in the name of Riggs was the airline ticket. He also testified that as a law

enforcement officer he doesn't consider an airlines ticket as identification.

Before the Grand Jury, Deputy Marshal O'Flaherty testified that after he asked her for identification, Miss Riggs produced a registration with the name Fairh Riggs on it.

At the hearing O'Flaherty was unable to say what registration he had been referring to, but he denied that he had ever seen an automobile registration. He said that he had only seen two electric bills.

REASONS FOR GRANTING THE WRIT

The question in this case is whether the Deputy United States Marshals acted lawfully in stopping the petitioner and requesting identification. This stop led to a search and

discovery of the narcotics.

The Court of Appeals for the Second Circuit sustained the stop by finding that the officers had sufficient reason for suspecting Miss Riggs of a narcotics violation and were thereby justified in taking the action.

This holding by the Court of Appeals is such a drastic extension of the doctrine espoused in Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968) that it should not pass without review by this Court.

In addition, a reading of the opinion of the Court of Appeals indicates that the uncontested facts of the case have been seriously misconstrued.

It is possible that the extension of Terry v. Ohio, supra, resulted inadvertantly from this misconstruction.

The Court of Appeals listed "a number of 'specific and articulable facts'" which "provided an adequate basis for the Marshals' reasonable suspicion to justify" the Terry-type stop.

Firstly, the Court cited the fact that Miss Riggs allegedly purchased a one-way ticket in Detroit for cash taken from a brown paper bag and that she and her companions had avoided any appearance of recognition. The Court added to this the fact that Miss Riggs was allegedly carrying stacks of money in a brown paper sack and had originally lied to an American Airlines supervisor about the contents of the bag.

Marshals Huttick and O'Flaherty had no knowledge of any of these facts. Port Authority Police Detective Stone, who

had received information about the appellant from Detroit, testified that he told the United States Marshal's office that

> ...three people had come in, you know, in a suspicious manner, and we had received a report from Michigan that they were here--our suspicion was that they were here possibly to make a narcotics buy or they were trafficking in narcotics.

As additional "articulable facts" the court listed the alleged use by the appellant of the name P. Griggs on her eastbound ticket, the background information on Cynthia Joyce Griggs, and the appellant's use of the name F. Riggs on her return ticket.

Deputy Marshal Huttick received all the information he had concerning Fairh Riggs from Deputy Ron Ehnes. Deputy Ehnes told Huttick that a "female negro" accompanied by two "male negroes" was arriving

from Detroit carrying a large amount of cash. Ehnes told Huttick that the report said that the woman might be here to buy narcotics. Deputy Huttick was given a description of the woman but no name was given to him.

Deputy Huttick testified that the next thing that happened relevant to this case was that he received a telephone call from an American Airlines Supervisor who told Huttick that the airlines had been told to be "on the lookout for one female Negro and, possibly, two male Negroes attempting to board one of the flights to Detroit; that they might be carrying a large amount of narcotics, and carrying weapons." The Supervisor told Deputy Huttick that the female, Fairh Riggs, was waiting at Gate 9

for a flight to Detroit.

Richard Ruckel, the American Airlines Supervisor's testimony corroborated Huttick's as to the content of the conversation with the exception that Ruckel claimed that he told the marshal that the name and the description of the woman fit that which he had been given by the Port Authority Police. He further testified that he told Marshal Huttick "the name Fairh Riggs was the name on the ticket. That is exactly the name that was suggested to me" by the Port Authority Police.

Huttick told Deputy Marshal O'Flaherty that the woman the Marshals had received notice on was at Gate 9 and together they went down to that gate. O'Flaherty had never spoken to any American

Airlines official or a Port Authority policeman about the case. He testified that he had not been told by anyone that Miss Riggs was suspected of trafficking in narcotics. He testified that he had not been told that Miss Riggs was suspected of carrying a weapon.

The testimony of the arresting officers themselves clearly establishes that they did not possess knowledge of any of the articulable facts by which the court justified their action. Only one of the two officers was even aware of what "suspicions" were harbored by the Port Authority Police about the appellant. The other officer, the officer who actually stopped Miss Riggs, conducted the inquiry, search and arrest, was, by his own testimony, totally ignorant

of the facts and circumstances of the matter.

Neither officer knew that the appellant had flown into New York with a ticket in the name of P. Griggs so, obviously, no suspicions could have been raised by appellant's use of the name Fairh Riggs. In fact, the testimony of American Airlines Supervisor Richard Ruckel would tend to establish that, if anything, the woman in question was using the same name as she had previously used.

Neither officer was aware of any of the events which occurred in Detroit. Neither officer was aware of any information concerning Cynthia Joyce Griggs. (On the point of the use of multiple names, Port Authority Detective Stone testified that he had not heard the name Cynthia Joyce Griggs until months after the stop. Obviously, the

marshals could not have been aware of any possible aliases.)

The total lack of grounds justifying a suspicion by the Deputy Marshals is emphasized by Huttick's query of Ruckel as to whether Miss Riggs fit the American Airlines hijacker profile. Huttick's testimony:

> He told me that -- I asked if she had met the FAA hijacker profile; that I could not respond to the airlines if she did not, unless the information was given that she was possibly carrying weapons, and he said she did meet the profile.

There can be no evidence which could indicate more clearly that the arresting officers themselves, moments prior to the Terry-type stop, did not believe they had enough facts to support any such action. It is incongruous to hold, in the face of Huttick's testimony, that he had knowledge of

"articulable facts" upon which he based a reasonable suspicion justifying the stop of Fairh Riggs.

In Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968), this Court upheld the action of a police officer in stopping and frisking the appellant, Terry, in a street.

The Court in Terry was dealing with a situation of "necessarily swift action predicated upon the on-the-spot observations of the officer on the beat." 392 U.S. at 20.

The Court said that "in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." 392 U.S. at 21.

The standard for judging the officer's

conduct is:

> would the facts available to the officer at the moment of the seizure of the search warrant a man of reasonable caution in the belief that the action taken was appropriate.
>
> 392 U.S. at 21, 22.

"Anything else would invite intrusions upon constitutionally guaranteed rights based on nothing more than substantial hunches, a result this court has consistently refused to sanction. Citations omitted. 392 U.S. at 22.

This Court upheld the action of the officer involved because it was necessary police action based on the officer's experience and observation of suspicious behavior.

But this is not the situation in this case. Careful attention to the facts of this case reveals that the officers had no facts

upon which to base their actions. At the time they stopped Miss Riggs, they would not have been able to point to a single articulable fact in support of their "suspicions". They had made no first-hand observations. They had not even been given second-hand knowledge of the facts, relied on by the lower courts. Their action was a response to someone else's suspicions, without pause to acquire justifying evidence. Their doubts are eloquently expressed by Huttick's statement to Supervisor Ruckel that the marshals couldn't respond unless Miss Riggs fit the hijacker profile.

The action of the Deputy United States Marshals cannot be justified under Terry v. Ohio, supra, because they did not possess those facts listed by the lower Courts

in support of their stop of Fairh Riggs.

The affirmance by the Court of Appeals is a drastic extension of Terry v. Ohio. In this situation there was no officer in the street, reacting to observed stimuli. The arresting officers in this case, Deputy Marshals Huttick and O'Flaherty, possessed knowledge of no facts about the petitioner. The marshals made no observations of petitioner's behavior. All the officers knew were the "suspicions" and "hunches" of fellow law enforcement officers. They lacked even second-hand knowledge of the facts supporting their suspicions.

In fact, even the suspicions reached the marshals third-hand, through still another individual, Deputy Marshal Ron Ehnes who himself had no knowledge of any underlying

facts.

Simply, this Court is asked to sanction the stop of an individual based on suspicions relayed to the arresting officers through a third person. Neither the arresting officers themselves nor the person who relayed the suspicions made any observations of the petitioner's behavior, nor had any personal knowledge of the facts underlying the suspicions.

This police action is a far cry from the appropriate escalating action of an officer on the street as foreseen in Terry v. Ohio, supra. In that case, the Court recognized that police officers must have an allowable range of responses appropriate to perceived stimuli. Only the officer in such a situation could gauge the action necessary

to respond to the danger perceived. This situation is grossly different.

The relaying of unsubstantiated "facts" from one police officer to another and then the relaying of unsupported suspicions from that second officer to two arresting officers through yet a fifth individual presents a myriad of danger spots in which the rights of citizens can be abused.

The case herein is particularly compelling since the seizure of contraband resulted from an alleged "plain view" observation by the officers while conducting a stop and inquisition of the petitioner. Their claim negates the necessity of a showing of probable cause to conduct a search.

The power of police officers to stop citizens and the possibility of justifying seizure

of contraband through a claim of "plain view" observation, demands control to prevent the obvious potential for abuse. Surely the Terry stop should not be allowed on any basis less than the "specific and articulable" facts which existed in Terry v. Ohio. The acting officers here did not possess such a factual basis. Their action violated the rights of the petitioner under the Fourth Amendment to the Constitution.

CONCLUSION

The petition for certiorari should be granted because the Deputy United States Marshals acted on another officer's suspicions, not facts or observations in stopping the petitioner.

Respectfully submitted,

HENRY B. ROTHBLATT
Attorney for Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-against- :

71-CR-1407

FAITH RIGGS, :

Defendant :

----------x

Appearances:

Honorable Robert A. Morse
United States Attorney
Eastern District of New York
Attorney for United States
of America
Joseph W. Ryan, Jr. Esq.
Assistant U.S. Attorney
Of Counsel

Henry B. Rothblatt, Esq.
Attorney for Defendant
Stephan H. Peskin, Esq.
Of Counsel

DARTELS, D.J.

Defendant Fairh Riggs moved this court for an order pursuant to Rule 41, F.R.Crim.P., 18 U.S.C., to suppress all evidence obtained, directly or indirectly, from her detention, search and arrest at the LaGuardia Airport on September 26, 1971. Extensive hearings on the motion were held on December 27, 28, and 29, 1971, and May 11, 1972. The Government offered testimony of two Deputy United States Marshals, a New York Port Authority Police Detective, three American Airlines supervisors at LaGuardia Airport and one at Detroit Metropolitan Airport, two Correction Officers of the New York City Department of Correction, a detective of the Michigan State Police, and a tic-

ket salesman for American Airlines at LaGuardia Airport. The defendant offered her own testimony.

The central issue presented is whether the two Marshals, Allen P. Huttick and David O'Flaherty, were justified in forcibly stopping defendant Riggs on an American Airlines boarding ramp at LaGuardia Airport just prior to departure for Detroit, Michigan, for the limited purpose of identifying her on the ground that they reasonably suspected her of committing the felony of possessing narcotics, and on the additional ground that she was a potential danger to aircraft security. For reasons set forth below, the court believes that the jetway stop of the de-

fendant at LaGuardia Airport and her subsequent arrest arising from a discovery of narcotics on her person was lawful, and accordingly the court denies defendant's motion to suppress.

Facts

On the morning of September 26, 1971, the defendant Riggs, a young female Negro wearing a brilliant orange coat and large gold hoop earrings, carrying no luggage, purchased three one-way airplane tickets at Detroit for an American Airlines flight from Detroit to New York, paying for them with cash from a brown paper bag filled with money. She was accompanied by two Negro males, and her ticket was purchased in the name of

"P. Griggs." The circumstances surrounding the purchase were deemed suspicious by the airline officials in Detroit, and the supervisor testified that she was a selectee pursuant to the Federal Aeronautics Administration (F.A.A.) "behavioral profile" system. Accordingly, Riggs was stopped by the supervisor before boarding the flight and asked for some identification. At first she denied having identification but subsequently she gave the supervisor "some identification." What this consisted of he was unable to say. Upon inquiry as to what she had in the paper bag, she told the supervisor it was her lunch. With her permission, the supervisor, as a security precaution, looked

into the brown paper bag and found, instead of lunch, a large amount of money. She was nevertheless permitted to board the flight but thereafter the supervisor reported the incident to Detective William R. Schmidt of the Michigan State Police, located at the airport. Schmidt, in turn, checked the name of "P. Griggs" with the Michigan State Police, the Detroit Police Department's Narcotics Section, and the Federal Bureau of Narcotics and Dangerous Drugs. He received a report on one "Cynthia Joyce Griggs" and he testified that he believed "P. Griggs" to be "Cynthia Joyce Griggs," a young female Negro who, according to the reports he had received, was a known drug

dealer arrested at least twice for possession of narcotics, the first arrest resulting in a dismissal because the principal witness against her was a homicide victim, and the second arrest involving the seizure of three handguns and a shotgun in the apartment in which she was staying. "Cynthia Joyce Griggs" also, according to the report, had an alias of "Betty Jackson," and was presently out on bail on another arrest.

Detective Schmidt then alerted Detective Stone of the New York Port Authority Police at LaGuardia Airport that a young Negress wearing a brilliant orange coat and large gold hoop earrings who had purchased three one-way tickets and paid for them in cash from a paper

bag filled with money, accompanied by two male Negroes, would arrive at LaGuardia Airport at 11:40 A.M. Schmidt also transmitted to Stone all the information he had collected about "Cynthia Joyce Griggs," and also told Stone that "She might be suspected of possibly carrying a gun because of her association-on her last arrest, it might be something to look out for." On the basis of this information, Stone assigned two plainclothes Port Authority policemen, who observed all three disembark in New York separately and without luggage from the 11:40 A.M. flight, and leave the airport in two separate taxicabs. Stone thereupon notified the United States Marshals at LaGuardia Airport, and all of the air-

lines at LaGuardia Airport which fly into Detroit, that a young female Negro wearing a bright orange coat and gold hoop earrings was suspected of having come into New York to make a narcotics buy, along with two young Negro male companions, and that she might possibly be carrying a weapon.

At approximately 1:40 P.M. that same day, while monitoring American flight 617, LaGuardia to Detroit, American Airlines supervisor Richard Ruckel noticed a young female Negro answering to the description of the person thought to be Griggs, seated in the departure lounge, and verified that she had purchased in the name of "Fairh Riggs" a one-way ticket to Detroit on

that flight. He immediately called Stone and, at Stone's request, called the "U.S. Sky Marshal" at the TWA terminal. Ruckel then advised Marshal Buttick that American Airlines had received information from the Port Authority Police to be on the lookout for a young Negro woman suspected of trafficking in narcotics and possibly carrying a weapon; that a young Negro woman meeting the description transmitted had just arrived at Gate 9 and checked in for passage on a flight to Detroit scheduled to depart at approximately 1:55 P.M.; that the flight was ready for boarding; that the suspect was a selectee under the F.A.A. "behavioral profile" system; and that therefore the

Marshals were requested to respond to Gate 9.

Marshal Huttick advised Marshal O'Flaherty, at the TWA gate, that the woman the Port Authority Police were looking for was in the boarding lounge, ready to depart on an American Airlines flight for Detroit, and the airline supervisor had requested them to proceed to Gate 9. Marshal O'Flaherty already knew from reading a notice posted by Deputy United States Marshal Ron Ehnes on the U.S. Marshal bulletin board that the Port Authority Police were looking for a Negro woman wearing a brilliant orange coat and gold earrings and carrying a large amount of money, arriving from Detroit. Marshals Huttick and

O'Flaherty proceeded to Gate 9, where they noticed that Riggs, satisfying the above description, had entered the jetway or connecting link between the lounge and the aircraft. As Riggs was about to step into the aircraft from the jetway, she was stopped by the Marshals, who identified themselves, and requested her flight ticket, which bore the name of "Miss F. Riggs." She was then asked for some identification, such as a license or a voter registration, to verify the name on the ticket, and in order to facilitate boarding of other passengers onto the plane, she was simultaneously escorted towards the beginning of the jetway. The door between the jetway and aircraft remained open. Riggs

and the two Marshals were alone in the jetway.

In order to present her identification credentials, Riggs placed a leather camera case, which she was carrying, on the floor of the jetway, near her feet, and then "cracked open" a black snap-lock purse, which she was also carrying, and produced a utility bill of the Detroit Edison Company addressed to "Farah Jackson." O'Flaherty thereupon demanded a better form of identification. Riggs again opened her purse, but this time all the way (approximately six inches at the mouth), enabling Marshal Ruttick to observe "a clear plastic bag with a white substance inside on top of the purse,"

which the Marshals believed to be heroin. Riggs then appeared to be "very nervous," "fumbled" for a few seconds with her purse, and pulled out a second identification, a letter addressed to "Farah Jackson" from the Detroit Edison Company. O'Flaherty then opened the top of the camera case sitting on the floor and observed two more clear plastic bags containing white powder.[1/] At this point the Marshals took Riggs to their office and on the way subjected her to a magnetometer test. No weapon was found on her person or in her bags, but field tests confirmed that the plastic bags discovered in her purse and in her camera case contained heroin. She was then formally placed under arrest for unlawful possession of narcotics.

At the suppression hearing Detectives Stone and Schmidt testified that defendant "Fairh Riggs" and "Cynthia Joyce Griggs" were two separate individuals; that Griggs, not Riggs, had been arrested at least twice before for possession of narcotics; that the intelligence data obtained from law enforcement authorities in Detroit concerned Griggs, not Riggs, but that the mistake was not discovered until the first suppression hearing, three months after the incident giving rise to the arrest.

Law

In this case the Marshals, before stopping Riggs, did not have probable cause to either arrest Riggs or in-

vade her privacy by a search and seizure of her personal effects. But they did, under the circumstances, have a legal basis to stop Riggs at least for identification purposes. It was the exposure of the white plastic bags containing white powder which they believed to be heroin in her purse, ensuing after the stop and caused by her fumbling, that provided the probable cause for her arrest.[2/] The court is not presented here with a frisk or full-blown search of Riggs, nor with any extended detention or interrogation of her in the jetway. The Government's suspicions for a narcotics violation were based upon the following: First, the departure of Riggs from the

Detroit airport, using the name of "P. Griggs," together with two males, under the suspicious circumstances of carrying no luggage and paying for three tickets with cash taken from a brown paper bag filled with money; second, notification by the Michigan State Police to the New York Port Authority officials that the former believed Riggs to be "Cynthia Joyce Griggs" who was arrested at least twice for narcotics offenses and who might be dangerous; and third, the return of Riggs to the LaGuardia Airport at 1:40 P.M. on September 26, 1971, just barely two hours after her arrival in New York, for a return flight to Detroit, still carrying no luggage, only this time using

the name "Fairh Riggs." For the encounter here challenged the required degree of probability that the defendant might be engaged in some type of criminal activity is much less than that constitutionally required for a probable cause to arrest or search. See LaFave, "Street Encounters" and the Constitution, 67 Michigan Law Review 39, at 40 (1968-69). But there is much more. Riggs satisfied the criteria of the "behavioral profile"[3/] developed by the Federal Aviation Administration with the cooperation of other law enforcement agencies and commercial airlines.[4/] The purported intrusion upon this defendant's privacy was, under the circumstances, so minimal and the societal interest in ade-

quately identifying aircraft passengers for protective and record purposes was so clear that the court has little difficulty in upholding the stop in this context. The Marshals therefore had reasonable and objectively articulable grounds to suspect Riggs of both trafficking in narcotics and also posing a threat to aircraft security. Accordingly, they were justified in stopping her for identification and inquiry purposes.

Recent Supreme Court decisions have indicated that in order to strike a proper balance between individual and societal interest, police may stop persons on less than probable cause predicated upon objective obser-

vation or information from reliable sources which provide them with reasonable grounds to suspect that a person is engaged in criminal activity. In Terry v. Ohio, 329 U.S. 1 (1968), the Supreme Court validated the right of a police officer to make an "on-the-street stop and frisk" for his own protection, even though there was no cause for arrest, when the defendant's conduct led the officer to reasonably conclude from all the circumstances that criminal activity might be afoot and that the defendant might be armed and presently dangerous. This, of course, was not the instant case. However, in its latest decision, the Supreme Court by dictum extended this right of police to stop for

a limited inquiry even though no weapon was involved. In Adams v. Williams, ____U.S.____(1972), 92 S.Ct. 1921, the court amplified the Terry principle and held that a police officer may justifiably rely upon an unverified tip from a reliable informer, without personal observation, to make a forcible stop to investigate the activities of a person reported to be carrying narcotics and a concealed weapon. At page 1923, the court said:

> "A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time. Id., at 21-22; see Gaines v. Craven, 448 F. 2d 1236 (CA9 1971); United States v. Unverzagt, 424 F. 2d 396 (CA 1970)."

While in the instant case the belief that this defendant might be carrying a weapon rested upon fragile grounds, such a suspicion of weapons is no longer necessary for a brief stop. Indeed, Gaines v. Craven, 448 F. 2d 1236 (9th Cir. 1971), cited with approval by the Supreme Court in Adams, upheld a limited inquiry of the defendant upon suspicion of possession of narcotics without any suspicion of a weapon.

Defendant contends that the brief stop was improper because it was predicated upon misinformation and because actually she posed no reasonable expectation of danger. Only the first contention need be answered since she fell within the profile category. It is

possession of narcotics without any suspicion of a weapon.

Defendant contends that the brief stop was improper because it was predicated upon misinformation and because actually she posed no reasonable expectation of danger. Only the first contention need be answered since she fell within the profile category. It is true, as it became evident at the suppression hearing, that the information provided by the Michigan State Police was misinformation and that it really applied to a woman named "Cynthia Joyce Griggs" and not the defendant Fairh Riggs. But the Court satisfied itself at the hearing that the New York Port Authority Police and the Deputy Marshals acted in good faith on September 26, 1971, when

they relied upon the reports of fellow law enforcement officers and airline officials. While subjective good-faith belief alone would not justify the stop, the arrest and the subsequent search, here more than subjective good-faith was involved. The New York officials were entitled to assume that the information received by them was reliable, particularly since it was corroborated by other suspicious objective circumstances surrounding Riggs' conduct. See United States v. Ventresca, 380 U.S. 102,111 (1965); Travis v. United States, 362 F.2d. 477, 481 (9th Cir. 1966), cert. denied,385 U.S. 885 (1966); United States v. Thoresen, 281 F.Supp. 598 (D.C. Cal. 1967),cf. Hill v. California, 401 U.S. 797 (1971).

Moreover, Riggs was at an airport in the process of boarding a plane about to depart, which would have immediately transported her out of the Marshals' jurisdiction, and the police therefore had no time to verify the information received through official channels. It would be wholly unrealistic for this Court to conclude with this background in mind that the Marshals had no basis to stop Riggs for a limited inquiry. See Travis v. United States, supra. As noted in Adams v. Williams, supra (p. 1923):

> "The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence of good police work

> to adopt an intermediate response.* * * A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time."

Once having been stopped, Riggs then failed, at least in the first attempt, to produce proper identification. In her fumbling second attempt she opened up her purse and unwittingly disclosed to the Marshals plastic bags containing white powder with the appearance of heroin, which immediately gave them probable cause for arrest and the subsequent search and seizure. See Coolidge v. New Hampshire, 403 U.S. 443 (1971).

Under the circumstances, the motion to suppress must be denied. SO ORDERED.

Dated: Brooklyn, N.Y.
April 25, 1973

John R. Bartels
UNITED STATES DISTRICT JUDGE

FOOTNOTES

1/ Defendant Riggs' account of the jetway encounter differed in material respects. She claimed that she presented a Michigan automobile registration bearing the name of "Fairh Riggs," when asked for identification by the Marshals. She further asserted that when the Marshals thereafter asked for permission to search her belongings, she denied that permission but Marshal Huttick nevertheless searched both her purse and camera over her objection. Because of her fantastic and incredible story as to how she obtained the cash and narcotics found in her possession, this court rejected the defendant's version. Only three months had elapsed between her arrest and the first suppression hearing, and the Marshals' recollection or the encounter appeared fresh in their memory. Finally, the documentary evidence of inventories made by the Women's House of Detention and the testimony of Correction Officer Rayford corroborated the Marshals' account but not the defendant's story.

2/ The essence of the probable cause standard to arrest is the presence of evidence "that would warrant a prudent and reasonable man (such as a magistrate, actual or hypothetical) in believing that a particular person has committed or is committing

a crime." Sibron v. State of New York, 392 U.S. 40, 75 (1968)(Harlan, J. concurring). See e.g., Beck v. Ohio, 379 U.S. 89 (1964); Brinegar v. United States, 338 U.S. 160 (1949); Henry v. United States, 361 U.S. 98 (1959). No probable cause for arrest could be inferred from the facts and suspicious circumstances prior to the jetway encounter.

3/ For a detailed description of the system's operation, see United States v. Lopez, 328 F. Supp. 1077 (E.D. N.Y. 1971). The Court of Appeals has recently upheld the constitutionality of both a stop and a frisk predicated upon the profile system. United States v. Bell, Slip Op. 3917 (2d Cir., July 5, 1972). The instant case, however, unlike both Lopez and Bell, simply involved a brief stop, without a frisk until after the arrest of defendant Riggs.

4/ Because of the sensitivity of the "behavioral profile" system, this court held part of the suppression hearing in camera with the defendant and the public excluded. Defendant's counsel was present throughout and offered no objection to a brief in camera hearing. The evidence adduced in camera has satisfied the court that the selection and procedure applied by the

American Airlines was objective, that it complied with the Federal Aeronautics Administration anti-hijacking system, and that defendant Biggs properly fell within the ambit of the profile.

FILED FEB 20

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 513—September Term, 1972.

(Argued January 18, 1973 Decided February 15, 1973.)

Docket No. 72-2181

UNITED STATES OF AMERICA,

Appellee,

—against—

FAIRH RIGGS,

Appellant.

Before:

FRIENDLY, *Chief Judge,*
OAKES and TIMBERS, *Circuit Judges.*

Appeal from a judgment of the District Court for the Eastern District of New York, John R. Bartels, *Judge,* convicting appellant of possessing two kilograms of heroin with intent to distribute, in violation of 21 U.S.C. § 841(a)(1), after denial of her motion to suppress the evidence as unconstitutionally obtained, 347 F. Supp. 1098 (1972).

Affirmed.

MARTIN D. DEHLER, Esq., Assistant United States Attorney (Robert A. Morse, Esq., United States Attorney, Eastern District of New York, and Raymond J. Dearie, Esq., Assistant United States Attorney, of Counsel), *for Appellee.*

HENRY B. ROTHBLATT, Esq., New York, N.Y. Rothblatt, Rothblatt, Seijas & Peskin, New York, N.Y., of Counsel), *for Appellant.*

FRIENDLY, *Chief Judge:*

The sole question on this appeal from a conviction, in the District Court for the Eastern District of New York, for possessing two kilograms of narcotics with intent to distribute, in violation of 21 U.S.C. § 841(a)(1), is the legality of the acts of law enforcement officers that led to the discovery of the narcotics. These included stopping the appellant, Fairh Riggs, at LaGuardia Airport and asking for identification, a consequent "plain view" of a plastic bag containing white powder in her purse and, finally, a search of her camera case which disclosed the two kilograms of heroin. Although the incident arose in the context of a purported anti-hijacking investigation, we sustain the acts of the law enforcement officers on the basis that they had sufficient reason for suspecting Miss Riggs of a narcotics violation to authorize what was done.

On the basis of the testimony permissibly credited by the trial judge in his reported opinion denying appellant's motion to suppress after an extensive hearing, *United States* v. *Riggs*, 347 F. Supp. 1098 (E.D.N.Y. 1972), the facts were as follows: The events, all occurring on Sunday, September 26, 1971, began with the arrival of Miss Riggs, a young black female wearing a brilliant orange coat and carrying no luggage, at the Detroit Municipal Airport at about 8:45 A.M. She was accompanied by two males. At the American Airlines counter she bought three one-way tickets to New York and paid for them with cash which she produced from a brown paper bag. Her ticket was purchased in the name of "P. Griggs." Since she met the "profile," see *United States* v. *Bell*, 464 F.2d 667 (2 Cir.

1972), then being used by American Airlines, the clerk at the counter summoned a supervisor. By the time the supervisor arrived, one of the males had boarded; the other was still near the counter but he and Miss Riggs acted as if they did not know each other.

Both passengers were stopped before boarding the flight and were asked for identification. At first both denied having any, but later appellant produced some identification, perhaps a driver's license, in the name "Fairh Riggs." The supervisor inquired what was in the brown paper bag; Riggs answered it was her lunch. He asked to check the bag, Riggs opened it, and he saw it was filled with "stacks of money." The supervisor permitted her to board; the male passenger was also allowed to do so, after a frisk. Appellant's counsel conceded at argument that none of these happenings at Detroit violated appellant's Fourth Amendment rights.

Rendered suspicious by all of the above, the airline supervisor related the facts to Detective Schmidt of the Michigan State Police, who was headquartered at the airport. Detective Schmidt testified that the large amount of cash Miss Riggs was carrying, and the unusual way in which she was carrying it, led him immediately to suspect that she was engaged in narcotics traffic. A check revealed that while the state police had no record for "P. Griggs", they did have one for Cynthia Joyce Griggs, also known as Betty Jackson, a young black female who had been arrested in 1966 on a narcotics charge but whose case had been dismissed after the main prosecution witness was murdered. The Detroit Police Department reported that Cynthia Joyce Griggs had been recently arrested with nine other persons on a narcotics charge as a result of a search of her apartment which also turned up three handguns and a shotgun, and that she was currently on bail. The Detroit office of the Federal Bureau of Narcotics and

Dangerous Drugs confirmed that Cynthia Griggs was known to them as a narcotics dealer.

Believing, not unreasonably, that the "P. Griggs" ticketed on the flight might in fact be Cynthia Joyce Griggs, Detective Schmidt passed on to Detective Stone of the Port of New York Authority Police at LaGuardia Airport all the information that had been collected. Plainclothesmen dispatched to meet the flight from Detroit reported that the woman had left in one taxi and the two men in another. Detective Stone then notified each of the airlines and the United States Marshal's anti-hijacking detail at LaGuardia of all the above and of the likelihood that the three might be returning after having made a buy of narcotics; he added, apparently only on the strength of the Detroit Police report, that they might be carrying weapons.

About 1:40 P.M. an American Airlines supervisor at LaGuardia telephoned Detective Stone that a woman fitting the description of P. Griggs had purchased with cash a one-way ticket for a 1:55 flight to Detroit and was in the lobby at Gate 9. Stone instructed the supervisor to call the United States marshals while he and his partner proceeded to the Gate.

The supervisor called Deputy Marshal Huttick, who had been informed of the facts earlier related by Detective Stone; he told Huttick that a woman matching Griggs' description was in the lobby at Gate 9 awaiting a return flight to Detroit, mentioned that on this occasion the ticket had been bought in the name of "Fairh Riggs," and added that she met the "profile." Huttick and his partner O'Flaherty immediately went to Gate 9. Riggs had already entered the jetway, but they stopped her before she boarded the plane. They showed their credentials and said they were making a security check. O'Flaherty asked to see the plane ticket, found it was indeed in the name of

"F. Riggs," and asked for some verification. Placing on the floor in front of her a leather camera case which had previously been strapped over her shoulders, appellant opened her purse and produced a utility bill bearing the name "Farah Jackson." O'Flaherty asked for better identification. Appellant again opened her purse, wider this time; both marshals saw on the top a clear plastic bag containing white powder. Riggs fumbled with her purse for a few seconds and pulled out a letter from the utility company also addressed to "Farah Jackson." O'Flaherty then flipped open the top of the camera case, saw two plastic bags filled with white powder, and money stuck underneath the bags and on the sides.[1] Miss Riggs, her pocketbook and camera bag were taken to the marshal's office, where field tests confirmed that the bags contained 1.9 kilograms of 75% pure heroin. Riggs was then formally placed under arrest.

Appellant argues that because the American Airlines "profile" did not quite conform to the Federal Aviation Administration profile discussed in *United States* v. *Lopez*, 328 F. Supp. 1077 (E.D.N.Y. 1971) and *United States* v. *Bell*, *supra*, 464 F.2d 667, and because the marshals did not in good faith believe that Riggs constituted a threat to the security of the airplane, there was no justification for anti-hijacking measures. We need not pass upon these arguments nor on the question, raised in *United States* v. *Moulener*, F. Supp. , 41 U.S.L.W. 2319 (C.D. Cal. 1972), how clearly the subject of an anti-hijacking search must be warned that he can avoid the search by declining to board the airplane. See also *United States* v. *Bell*, *supra*, 464 F.2d at 675 (Friendly, C.J., concurring). For we hold that the Deputy Marshals' request for identification as ap-

1 The camera bag was later found by the marshals to contain $4800 in cash.

pellant attempted to board her return flight was justified, under *Terry* v. *Ohio*, 392 U.S. 1 (1968), and *Adams* v. *Williams*, 407 U.S. 143 (1972), by their reasonable suspicion that Riggs was in fact Cynthia Joyce Griggs and had made a purchase of narcotics which she was about to transport to Detroit with a view to distribution, and that their search of her camera case was justified both by the probable cause which they then possessed to arrest her for that crime and by their reasonable suspicion that she might be armed.[2]

---

2 Appellant does not contend that the marshals lacked authority to make an investigatory stop apart from their powers under the anti-hijacking program. There would be no merit in such a contention. 18 U.S.C. § 3053 provides that "United States marshals and their deputies . . . may make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States . . . ." Although this statute does not in terms give marshals authority to make investigatory stops, we think that the power to take reasonable law enforcement steps short of, but which may well lead to an arrest can be fairly implied from the grant of powers of arrest. *Cf. United States* v. *Krapf*, 285 F.2d 647, 650 (3 Cir. 1960). It should be noted that although many states have enacted specific grants of stop and frisk powers since the Supreme Court's decision in *Terry* v. *Ohio*, *supra*, the majority of states still do not provide explicit statutory authorization for the stop and frisk, considering these powers to derive from the police's general law enforcement authority. See ALI, A Model Code of Pre-Arraignment Procedure 105-06 (Official Draft No. 1, 1972).

It is true that 28 U.S.C. § 570 provides that "A United States marshal and his deputies, in executing the laws of the United States within a State, may exercise the same powers which a sheriff of the State may exercise in executing the laws thereof," and that the New York stop and frisk law, N.Y. Crim. Proc. Law § 140.50 (McKinney 1971), does not include "sheriffs" within New York City within its grant of authority, see *id.* § 1.20 (33), (34). But § 570 should not be construed as a limitation on the powers otherwise possessed by federal marshals, see *United States* v. *Krapf*, *supra*, 285 F.2d at 650, particularly in this case since § 3053 is a later statute which was intended to provide congressional authorization for the powers of United States marshals independent of the vagaries of state laws. See H.R. Rep. No. 283, 74th Cong., 1st Sess. 2 (1935). Moreover, § 570 is derived from the Act of February 28, 1795, ch. 36, § 9, 1 Stat. 425, passed

A number of "specific and articulable facts," *Terry* v. *Ohio, supra,* 392 U.S. at 21, provided an adequate basis for the marshals' reasonable suspicion to justify the minimal intrusion upon appellant's privacy represented by a request for identification. We start with her purchase of airplane tickets, with cash taken not from a purse but a brown paper bag, and the efforts of appellant and her two companions to avoid any appearance of recognition. Compare *United States* v. *Canieso,* F.2d , , slip opinions p. 615, at 617, 623 (2 Cir. 1972). We add her carrying "stacks of money," doing this in a brown paper bag, and lying about the bag's contents to the Detroit airline supervisor. This was enough to create the suspicion that appellant was going to New York on no ordinary errand but on one for which large sums of cash on the barrelhead would be needed—something characteristic of narcotics purchases, as the Michigan state police detective knew from his experience in similar situations. These suspicions were confirmed when Riggs returned to La-Guardia Airport—only two hours after arrival—with the brown paper bag now accompanied or supplanted by a camera case—and bought a ticket back to Detroit.

Arguably this alone would have sufficed to justify a demand for identification under *Adams* v. *Williams, supra,* 407 U.S. at 145-46, but we need not so decide. Appellant's eastbound ticket had been in the name of "P. Griggs." The police could reasonably have been suspicious under the circumstances that this was another alias designed to

---

at a time when the word "sheriff" referred to the general law enforcement authority of the state. It seems likely that the meaning of "sheriff" in § 570 is properly to be supplied by reference to this congressional understanding rather than by state law; Congress could not have intended that the drastic narrowing of the traditional role of the sheriff, at least in New York City, as his functions were assumed by police officers, should correspondingly reduce the powers of federal marshals.

conceal that appellant was really Cynthia Joyce Griggs, with her record of arrests for narcotics offenses and reputation as a narcotics dealer. Appellant's purchase of her return ticket in the name "F. Riggs" only added to the confusion surrounding her real identity. And when, in response to the marshal's initial inquiry, she presented identification in the form of a utility bill addressed to "Farah Jackson," a name not tallying either with that on her incoming or her outgoing ticket, this increased the confusion and heightened the suspicion that she might be Cynthia Joyce Griggs, since Michigan State Police records had revealed that the latter also used the alias Jackson. Deputy Marshal O'Flaherty was thus quite justified in demanding further identification—a demand that led to the opening of the purse and the "plain view" of the bag of clear white powder. *Adams* v. *Williams, supra,* 407 U.S. at 146.

At this time the Deputy Marshals had probable cause to arrest appellant for a narcotics offense. If they had done so, a search of the camera case would have been justified under the "grabbing-distance" principle of *Chimel* v. *California,* 395 U.S. 752, 763 (1969). However, Riggs was not formally placed under arrest until after tests confirmed that the white powder was heroin, and the Government does not contend that Riggs was arrested *de facto* prior to the search of the camera case, although we suspect that her chances of being released without being arrested were exceedingly poor. In *United States* v. *Gorman,* 355 F.2d 151, 159-60 (2 Cir. 1965), *cert. denied,* 384 U.S. 1024 (1966), we left open the question whether an incidental search which would have been justifiable after an arrest is equally so when there was probable cause for arrest but arrest was postponed: we indicated that, absent controlling contrary authority, of which there then was none, we would follow Mr. Justice Traynor in *People* v. *Simon,*

45 Cal. 2d 645, 648, 290 P.2d 531, 533 (1955), and uphold such a search. The justification for such an intrusion is the probable cause to believe that the individual has committed a crime and the need for immediate action to prevent the use of weapons against the arresting officer or destruction of evidence of the crime, see *Chimel* v. *California, supra,* 395 U.S. at 763; postponement of the further intrusion of arrest does not remove the justification for the search and in no way prejudices the individual's Fourth Amendment rights. Subsequent authorities have now established that view as firmly as anything short of a Supreme Court decision can. See *Bailey* v. *United States,* 389 F.2d 305, 308 (D.C. Cir. 1967) (Wright, J.) (dictum); *id.* at 316 (Leventhal, J., concurring); *Henderson* v. *United States,* 405 F.2d 874, 875 (5 Cir. 1968), *cert. denied,* 395 U.S. 906 (1969); *United States* v. *Skinner,* 412 F.2d 98, 103 (8 Cir.), *cert. denied,* 396 U.S. 967 (1969); *United States* v. *Thomas,* 432 F.2d 120, 122 (9 Cir. 1970), *cert. denied,* 400 U.S. 1022 (1971); *United States* v. *Brown,* 463 F.2d 949, 950 (D.C. Cir. 1972); *United States ex rel. Farrugia* v. *Bhono,* 256 F. Supp. 391 (S.D.N.Y. 1966) (Weinfeld, J.). We therefore hold that the marshal's search of the camera case was a valid search based on probable cause for appellant's arrest and the fruits of the search were fully admissible against her.

Beyond that, there is another basis for upholding the marshal's cursory examination of the camera case. The plain view of the plastic bag containing white powder, along with the other circumstances we have noted, justified the marshals in detaining appellant for the short interval needed to subject the powder to chemical analysis. *Terry* held that "When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others," he may conduct a limited protective search

for concealed weapons, 392 U.S. at 24, and the Court reaffirmed this in *Adams* v. *Williams, supra*, 407 U.S. at 146. Here the camera case was on the floor directly in front of appellant; it was unlocked; the top needed only to be "flipped" open to get inside it. If the camera case had in fact contained a weapon, Riggs could have easily and quickly grabbed it. Moreover, the marshal's initial search was carefully limited to the quick inspection of the camera case necessary to determine if it contained a weapon. It may be true, as the district court noted, 347 F. Supp. at 1103, that "the belief that this defendant might be carrying a weapon rested upon fragile grounds," but courts should not set the test of sufficient suspicion that the individual is "armed and presently dangerous" too high when protection of the investigating officer is at stake. Although the deputy marshals had not received such a specific warning about the present possession of weapons as that in *Adams* v. *Williams*, the report of Detective Stone did give reason for fear that Riggs might be carrying a weapon, and their own investigation, during which they had observed her to be carrying what they reasonably and correctly believed to be heroin, and during which she had identified herself with the name "Jackson," tended to corroborate their suspicions that appellant might in fact be the Cynthia Joyce Griggs who was considered dangerous by the Michigan and Detroit police. Finally, that the marshals were in fact genuinely concerned by the possibility that Riggs was armed is confirmed by their actions immediately following the quick check of the camera case; since regulations prohibited them from frisking a female, they walked her through a magnetometer to determine if she were carrying a concealed weapon.

Affirmed.

JUDGMENT OF THE UNITED STATES
COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals in and for the Second Circuit held at the United States Courthouse in the City of New York, on the fifteenth day of February, one thousand nine hundred and seventy three.

PRESENT:

Hon. Henry J. Friendly
Hon. James L. Oakes
Hon. William H. Timbers

UNITED STATES OF AMERICA,

Plaintiff-Appellee

against-

RALPH PIGGS,

Defendant-Appellant

Appeal from the United States District Court for the Eastern District of New York.

This cause came to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered adjudged, and decreed, that the judgment of said District Court be and it is hereby affirmed.

/s/ A. Daniel Fusaro
Clerk

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, On the twenty-seventh day of March, one thousand nine hundred and seventh three.

PRESENT:

Hon. Henry J. Friendly

Hon. James L. Oakes

Hon. William H. Timbers,

Circuit Judges

THE UNITED STATES OF AMERICA

Plaintiff-Appellee

72-2181

-against-

FAIRH RIGGS,

Defendant-Appellant

A petition for a rehearing having been filed herein by counsel for the appellant.

Upon consideration thereof. it is

Ordered that said petition be and it hereby is denied.

/s/ A. DANIEL FUSARO

Clerk

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit held at the United States Courthouse in the City of New York, on the twenty-seventh day of March, one thousand nine hundred and seventy-three.

THE UNITED STATES OF AMERICA
Plaintiff-Appellee

-against-

FAITH RIGGS,
Defendant-Appellant

A petition for a rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the appellant, and no active circuit judge having requested that a vote be taken on said suggestion,

Upon consideration thereof, it is ordered that said petition be and it hereby is denied.

/s/ A. Daniel Fusaro

Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1460

FAIRH RIGGS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that federal marshals at an airport had no reasonable grounds to stop her to ask for identification, and thus that evidence obtained as a result of that stop should have been suppressed.

After a jury-waived trial in the United States District Court for the Eastern District of New York, petitioner was convicted of having possessed with intent to distribute approximately two kilograms of heroin in violation of 21 U.S.C. 841(a)(1). She was sentenced to seven years' imprisonment. The court of appeals affirmed (Pet. App. A30).

1. The evidence received at petitioner's pre-trial suppression hearing, which by stipulation also constituted the evidence at trial, is detailed in the comprehensive opinions of the district and circuit courts (Pet.

App. A4-A15, A31-A34). Briefly, Federal Marshals Huttick and O'Flaherty stopped petitioner and asked for identification as petitioner was boarding an American Airlines flight from New York's La Guardia Airport to Detroit on September 26, 1971. Petitioner, whose airline ticket bore the name "Miss F. Riggs," set her camera case on the floor and opened her purse slightly to produce a Detroit utility bill addressed to "Farah Jackson." When O'Flaherty asked for better identification, petitioner opened her purse to its full width, enabling Huttick to observe a clear plastic bag with a white substance inside which Huttick believed to be heroin, and pulled out a letter from the utility company addressed to "Farah Jackson." O'Flaherty then opened the camera case and observed two more clear plastic bags containing white powder. After field tests confirmed that the plastic bags in petitioner's purse and camera case contained heroin, petitioner was arrested (Pet. App. A12-A14).

Marshals Huttick and O'Flaherty had approached petitioner shortly after Huttick was informed at about 1:40 by American Airlines Supervisor Ruckel "that American Airlines had received information from the Port Authority Police to be on the lookout for a young Negro woman suspected of trafficking in narcotics and possibly carrying a weapon; that a young Negro woman meeting the description transmitted had just arrived at Gate 9 and checked in for passage on a flight to Detroit scheduled to depart at approximately 1:55 P.M.; that the flight was ready for boarding; that the suspect was a selectee under the F.A.A. 'behavioral profile' system * * *" (Pet. App. A9-A10).[1] A deputy marshal

---

[1] On the way to Gate 9, Huttick informed O'Flaherty, who earlier that day had read a notice on the U.S. Marshals' bulletin

had previously told Huttick that a young black woman, wearing a bright orange coat and gold hoop earrings, had flown to La Guardia that day from Detroit, was suspected of coming to New York to buy narcotics, and might possibly be carrying a weapon (Pet. 18-19; Pet. App. A8-A9).[2] The marshals noted that petitioner fit the description of the suspect (Pet. App. A12).

2. Petitioner's contention that Federal Marshals Huttick and O'Flaherty had insufficient reason to stop her to ask for identification is belied by the record. Huttick and O'Flaherty knew that a woman, fitting petitioner's description, was suspected of trafficking in narcotics and might be carrying a concealed weapon; and that petitioner fit the behavioral profile of a would-be hijacker. Therefore, even apart from the collective information possessed by all the investigators in the instant case (see opinion of the court of appeals, Pet. App. A31-A33),[3] Huttick and O'Flaherty were justified in requesting identification from petitioner. See *Adams*

---

board to be on the lookout for a negro woman arriving from Detroit wearing a brilliant orange coat and gold earrings and carrying a large amount of money, that the woman the Port Authority Police were looking for was ready to board the American Airlines flight at Gate 9 (Pet. App. A11).

[2] The basis for the suspicions of the Port Authority Police are described in the opinions below (Pet. App. A4-A9, A31-A33).

[3] Since probable cause for a search and seizure is determined by the collective information available when the decision to search is made and is not tested solely by the personal observations of the officers directly participating in the search (see, *e.g.*, *United States* v. *Sheppard*, 455 F. 2d 1081, 1083 (C.A. 10); *United States* v. *Stratton*, 453 F. 2d 36 (C.A. 8)), reasonable suspicion for a brief stop and limited questioning is not determined solely by the personal observations of the officers who actually stop and question the suspect.

v. *Williams*, 407 U.S. 143, 146; *Gaines* v. *Craven*, 448 F. 2d 1236 (C.A. 9); *United States* v. *Unverzagt*, 424 F. 2d 396, 398 (C.A. 8). As noted by this Court in *Adams* v. *Williams*, *supra*, 407 U.S. at 145: "The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape." And when, in response to the marshals' initial request for identification, petitioner presented identification different than the name on her ticket, the marshals were justified in requesting further identification—a request that led to the opening of the purse and the "plain view" of the bag of heroin (Pet. App. A37). At this point the marshals had ample probable cause to believe that petitioner was in fact carrying the reported narcotics, and were justified in immediately opening the camera case she was carrying with her.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1973.